

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

-and-

BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.

Respondents

MOTION RECORD OF THE RESPONDENTS

June 12, 2025

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

LSO No. 21592F

Tel: (416) 218-1129

Email: Harvey@chaitons.com

Danish Afroz

Tel: 416.218.1137

Email: Dafroz@chaitons.com

Darren Marr

LSO No. 79660G

Tel: (416) 218-1136

Email: Dmarr@chaitons.com

**Lawyers for the Respondents, 2145499
Ontario Inc., Barakaa Developer Inc. and
Lerrato Inc.**

TO: **DLA PIPER (CANADA) LLP**
Bay Adelaide Centre – West Tower
333 Bay Street, Suite 5100
Toronto, ON M5H 2R2

Edmond F.B. Lamek
LSO #33338U
Direct Tel: 416.365.4444
Email: edmond.lamек@dlapiper.com

Lawyers for the Receiver, KSV Restructuring

AND TO: **Paliare Roland Rosenberg Rothstein LLP**
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
Fax: (416) 646-4301

Jeffrey Larry (LSO#44608D)
Tel: (416.646.4330
Email: jeff.larry@paliareroland.com

Ryan Shah (LSO# 88250C)
Tel: 416.646.6356
Email: ryan.shah@paliareroland.com

Dillon Gohil (LSO#89738M)
Tel: 416.646.6353
Email: dillon.gohil@paliareroland.com

Lawyers for Foremost Mortgage Holding Corporation

AND TO: **KSV Restructuring Inc.**
220 Bay St. Suite 1300
Toronto, ON M5J 2W4

Bobby Kofman
Tel: 416-932-6228
Email: bkofman@ksvadvisory.com

Meg Ostling
Tel: 416-932-6022
Email: mostling@ksvadvisory.com

Court Appointed Receiver

AND TO: BERKOW YOUD LEV-FARRELL DAS LLP
141 Adelaide Street West, Suite 400
Toronto, ON M5H 3L5

Peter Smiley
Email: psmiley@byldlaw.com

Ranjan Das
Email: rdas@byldlaw.com

John Jeyaratnam
Email: jjeyaratnam@byldlaw.com

Lawyers for Sanjive Joshi

AND TO: FIJ Law LLP
Barristers & Solicitors
50 West Pearce Street, Suite 10
Richmond Hill, ON
L4B1C5
Fax: +1 (905) 763 3772

Ryan Hanna
LSO #55536V
Email: rhanna@fijlaw.com
Office: +1 (905) 763-3770 x250

**Lawyers for BIP Management Corporation
and Galidan Inc. (re: Joshi litigation)**

AND TO: BIP MANAGEMENT CORPORATION
Boris Piesok, Trustee
Tel: (289) 553-4838
Email: piesok@hotmail.com

AND TO: Corporation of the Town of Ajax
65 Harwood Avenue S
Ajax, ON
L1S 2H9
Email: jessica.ruhl@ajax.ca

AND TO: City of Richmond Hill
25 East Beaver Creek Road, Ground Floor
Richmond Hill, ON
L4B 3P4
Email: legal@richmondhill.ca

AND TO: GARDINER ROBERTS LLP
Bay Adelaide Centre - East Tower,
22 Adelaide St W, Ste. 3600,
Toronto, ON M5H 4E3

Daria Risteska
Email: dristeska@grllp.com
Tel.: (416) 865-6780

Lawyers for the Qadeer Family Purchasers

AND TO: Hans Dhingra and 1417199 Ontario Limited
Email: dhingrahans@gmail.com

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Respondents

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**ONTARIO
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-and-

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Respondents

AFFIDAVIT OF HITESH RAJENDRA JHAVERI SWORN JUNE , 2025

I, Hitesh Rajendra Jhaveri, of the City of Markham, in the Province of Ontario, hereby
MAKE OATH AND SAY AS FOLLOWS:

1. I am an officer and director of the Respondents, Barakaa Developer Inc. (“**Barakaa**”), Lerrato Inc. (“**Lerrato**”) and 2145499 (“**2145**”). I am also a Director and Officer of several other corporations which are not parties to this proceeding including Osmi Homes Inc. (“**Osmi**”) which together with Barakaa, Lerrato and 2145 form a real estate development and home builder business (collectively known as the “**Osmi Group**”).

2. As such, I have knowledge of the matters to which I hereinafter depose. The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits. Where such knowledge is stated to be on information and belief, I believe it to be true.

Overview

3. I am swearing this Affidavit in connection with the motion by KSV Restructuring Inc., in its capacity as the receiver and manager, of certain real properties of Barakaa, Lerrato and 2145 (the “**Receiver**”) seeking, *inter alia*, approval and vesting orders, for the sale of 3 properties owned by Lerrato municipally known as 371, 373 and 375 Porte Road, Ajax, Ontario. The sales of these properties are to be completed under agreements of purchase and sale originally entered into between Lerrato as vendor and the respective purchasers as amended by amending agreements entered into between the Receiver as vendor and the purchasers.

4. In support of the motion, the Receiver has delivered the Third Report of the Receiver dated May 29, 2025 (the “**Third Report**”).

5. The Respondents do not oppose the approval and vesting orders sought by the Receiver.

6. The purpose of this affidavit to correct certain factual errors in the Third Report and to provide context concerning the events which gave rise to the appointment of the Receiver.

Deposits Paid under the 377 Porte APS

7. Paragraph 5 of Section 2.1 and paragraph 2 of Section 2.2 of the Third Report state that the purchaser of the property municipally known as 377 Porte Road, Ajax (“**377 Porte**”) has paid \$679,949 in deposits under the agreement of purchase and sale for 377 Porte (the “**377 Porte APS**”). That is not correct.

8. The amount of the deposits paid under the 377 Porte APS is \$150,000.

9. The \$679,949 amount cited in the Third Report includes the Deposits in the amount of \$150,00, extras/upgrades (not included in the 377 Porte APS) and additional amounts unrelated to 377 Porte or the 377 Porte APS which have been repaid.

10. On March 31, 2025, I received an email from Maanit Patel (the son of the purchasers under the 377 APS) which confirmed that \$150,000 paid in 3 installments were only deposits paid under the 377 Porte APS. Attached hereto and marked as **Exhibit “A”** is a copy of Maanit Patel’s email dated March 31, 2025.

Foremost Will Not Suffer a Deficiency Following the Sale of the 5 Porte Road Properties

11. At paragraph 14 of the Receiver’s Notice of Motion and at paragraph 3 Section 4.0 of the Third Report, the Receiver states that the Applicant, Foremost Financial Holding Corporation (“**Foremost**”) will suffer a shortfall under its mortgage following the sale of the 3 Porte Road properties subject to this motion.

12. Foremost’s mortgage is cross-collateralized as against all 5 Porte Road Properties subject to this receivership proceeding. On this motion, only 3 of those properties are being sold and therefore there will still be a debt owing to Foremost under its mortgage following their sale. However, once all 5 properties are sold, Foremost’s indebtedness should be fully repaid.

This Receivership is a Direct Result of the Registration of the Fraudulent Joshi Mortgages

13. The Osmi Group has been operating for over 13 years.

14. Until the summer and fall of 2023, the Osmi Group operated its business successfully and profitably without incident. We had a good mutually beneficial relationship with our primary lender, Foremost.

15. In August and October 2023, Sanjive Joshi and Xpert Credit Control Solutions Inc. (collectively, the “**Joshi Parties**”) registered 9 mortgages (the “**Fraudulent Joshi Mortgages**”) against 11 properties owned by the Osmi Group (with the exception of Niketa and my matrimonial home). The Fraudulent Joshi Mortgages were each in the amount of \$5 million dollars for a total face amount of \$45 million.

16. The Fraudulent Joshi Mortgages were improperly registered by the Joshi Parties without the Osmi Group’s consent. Litigation ensued between the Joshi Parties and me, Niketa, and several companies in the Osmi Group including Lerrato, Barakaa and 2145.

17. The improper registration of the Fraudulent Joshi Mortgages caused immediate and devastating damage to the Osmi Group.

18. The registration of the Fraudulent Joshi Mortgages prevented the sale or refinancing of any of the encumbered properties and caused the Osmi Group to default under its mortgages with Foremost and other lenders.

19. The presence of the Fraudulent Joshi Mortgages made it impossible to complete to complete the sale of properties already subject to agreement of purchase and sale that were ready to close. This included several of the properties that are the subject to this receivership.

20. As a result, the Osmi Group suggested to Foremost that under the circumstances it made sense to seek the appointment of a Receiver to complete the sales of the properties and apply the proceeds to pay down the Foremost mortgage loans.

The Fraudulent Joshi Mortgages are Discharged

21. On January 23, 2025 a motion brought by the Osmi Group to discharge the Fraudulent Joshi Mortgages was heard by the Honourable Justice Koehnen.
22. On March 27, 2025, Justice Koehnen released his Reasons for Judgment for that motion in which he ordered the discharge of the Fraudulent Joshi Mortgages (the “**Decision**”). Attached hereto and marked as **Exhibit “B”** are copies of the Decision as well as the order of Koehnen dated March 27, 2025 (the “**Koehnen Order**”) discharging the Fraudulent Joshi Mortgages.
23. The Koehnen Order was not appealed by the Joshi Parties.
24. Pursuant to the Koehnen Order, all of the Fraudulent Joshi Mortgages including the mortgage registered against 377 Porte have been discharged and deleted from title.

SWORN by Hitesh Rajendra Jhaveri of the City of Markham, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 12, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)
DARREN MARR



HITESH RAJENDRA JHAVERI

This is **Exhibit “A”** referred to in the **Affidavit of Hitesh Rajendra Jhaveri**, sworn at the City of Markham, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 12, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink that reads "Darren L. Marr". The signature is written in a cursive, flowing style.

Commissioner for Taking Affidavits (or as may be)
DARREN MARR

From: [Hitesh](#)
To: [Darren Marr](#); [Harvey G. Chaiton](#)
Subject: Fwd: 377 Porte Road
Date: Tuesday, June 10, 2025 5:52:15 PM

CAUTION: [External]

Regards
Hitesh Jhaveri

Begin forwarded message:

From: Maanit Patel <shrirohit@msn.com>
Date: March 31, 2025 at 9:31:29 PM EDT
To: Hitesh Jhaveri <hiteshhitesh2004@yahoo.com>
Subject: 377 Porte Road

Hitesh Jhaveri,
Following Three Cheques are the only deposits for 377 porte Rd.
There is no other deposit apart from this

2022-08-12	021	75000.00
2022-08-12	241	50000.00
2023-06-21	100	25000.00

Rohit Patel.

This is **Exhibit “B”** referred to in the **Affidavit of Hitesh Rajendra Jhaveri**, sworn at the City of Markham, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 12, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink that reads "Darren L. Marr". The signature is written in a cursive, flowing style.

Commissioner for Taking Affidavits (or as may be)
DARREN MARR

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
SANJIVE JOSHI and XPERT CREDIT)	<i>Peter Smiley, Jesse Watts, John</i>
CONTROL SOLUTIONS INC.)	<i>Jeyaratnam</i> for the plaintiffs
)	
Plaintiffs)	
)	
– and –)	
)	
OSMI HOMES INC., HITESH)	<i>Harvey Chaiton, Stephen Schwartz,</i>
RAJENDRA JHAVERI, LERRATO INC.,)	<i>Darren Marr</i> for the defendants
OSMI9 LTD, BARAKAA DEVELOPER)	
INC., INUKA DEVELOPER INC.,)	
2145499 ONTARIO INC. and NIKETA)	
JHAVERI)	
)	
Defendants)	
)	
)	<i>Monica Unger Peters, Megan Van</i>
)	<i>Kessel</i> for the Responding Parties, Bay
)	20 Inc. and Akkina Developers Inc.
)	
)	
)	<i>Q. Ryan Hanna</i> for the respondent BIP
)	Management Corporation
)	
)	
)	HEARD: January 23, 2025

KOEHNEN J.

REASONS FOR JUDGMENT

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OVERVIEW

- [1] This action and motion arise out of the breakdown of the relationship between the plaintiffs and the defendants. The plaintiffs say they extended six loans to the defendants while the relationship was positive. The alleged loans are supported by six promissory notes (the “Promissory Notes” or “Notes”) which refer to security by way of mortgage. No mortgages were registered when the loans were said to be advanced. After the relationship broke down, the plaintiffs unilaterally registered nine mortgages against properties the defendants owned.

- [2] On this motion, the defendants move to strike out the mortgages and seek a declaration to the effect that nothing is owing on the six Promissory Notes. If the mortgages are struck out, the plaintiffs seek to register equitable mortgages and/or certificates of pending litigation on the properties. In addition, the plaintiffs seek leave to register certificates of pending litigation against 11 additional properties.
- [3] For the reasons set out in greater detail below, I declare the Promissory Notes to be void and strike out the mortgages. The *Bills of Exchange Act*¹ voids promissory notes which are materially altered by their holder without the consent of the debtor. These provisions have also been extended to documents collateral to the note at issue. The mortgages the plaintiffs registered materially altered the terms of the Notes thereby rendering them void. In addition, various mortgages should also be set aside because they: (i) purport to bind a matrimonial home without the consent of the spouse; (ii) were registered on multiple properties when the Notes refer to security on a single property; (iii) were registered on properties acquired after the Notes were purportedly issued when the Notes contain no reference to after acquired property; (iv) are registered against properties owned by parties who did not sign the Notes; and (v) encumber properties in the amount of \$45 million when the maximum principal amount owing on the Notes, including interest, is approximately \$5 million.

¹ *Bills of Exchange Act*, RSC 1985, c B-4

[4] I decline to grant equitable mortgages in the plaintiffs' favour. The Notes are being voided and the mortgages set aside because of the plaintiffs' inequitable behaviour, not because of a legal slip. Replacing those mortgages with "equitable" mortgages would be counter to principles of equity. I also decline to grant certificates of pending litigation to replace the discharged mortgages for the same reason. In addition, the plaintiffs have not met the test to obtain certificates of pending litigation.

[5] Finally, the plaintiffs seek equitable mortgages or certificates of pending litigation against 11 additional properties. I decline to grant that relief because four of the properties are owned by corporations that did not sign any of the Promissory Notes and in respect which arm's-length parties own 50% of the shares; one of the properties is owned by two individuals only one of whom signed a promissory note; and three of the properties are owned by non-signatories to the Notes. The remaining 3 properties are owned by signatories of the Notes. Given that the Notes have been set aside there is no longer any basis to encumber those properties.

I. Background Information

[6] The plaintiff, Sanjive Joshi is a mortgage broker and lender who has been carrying on business in that capacity since 2008 through the plaintiff company, Xpert Credit of which he is the sole shareholder officer and director.

[7] The defendants Hitesh and Niketa Jhaveri are spouses who build luxury custom homes and develop real estate projects through the corporate defendants of which

they are each 50% shareholders. Given their common surname, I will refer to each by their first names.

[8] Joshi and the Jhaveris met in July 2019 when Joshi signed an agreement of purchase and sale for a custom home built by the defendant Osmi Homes Inc. at 137 Twyn Rivers Drive, Pickering.

[9] After signing the Twyn Rivers agreement, a close personal relationship developed between Joshi, his wife Lakhanpal and the Jhaveris. Over time they developed a deep personal trust and treated each other like family. Over time, Hitesh and Joshi also entered into a series of business transactions, including what Joshi says were six loans evidenced by six Promissory Notes in the face amount of \$2.6 million as follows:

Date	Name	Amount
June 11, 2020	Promissory Note No. 1	\$400,000
July 31, 2020	Promissory Note No. 2	\$400,000
August 3, 2020	Promissory Note No 3	\$300,000
August 4, 2021	Promissory Note No. 4	\$400,000
September 13, 2021	Promissory Note No. 5	\$1,000,000

June 8, 2023	Promissory Note No. 6	\$100,000
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[10] Joshi says the Notes entitled him to mortgages as security. No mortgages were registered when the Notes were signed or when Joshi says he advanced monies on them.

[11] The purchase of the Twyn Rivers property was originally scheduled to close in October 2019. Closing was extended on numerous occasions. The parties differ on the reason for the extensions.

[12] The relationship between the parties broke down in August 2023. Joshi says the breakdown occurred when Hitesh refused to close on the Twyn Rivers purchase even though Joshi and his family had been living there for some time.² Hitesh says the breakdown occurred when Joshi secretly registered 9 mortgages in August 2023 against 10 properties that the Jhaveris owned either directly or through their corporations.

II. Challenges to the Promissory Notes and Mortgages

² The Twyn Rivers property is not the subject of today's motion but is the subject of a separate action that I am case managing. I refer to it here only by way of background information to explain, at least in part, the reason for the breakdown of the relationship.

[13] The defendants raise the following challenges to the Promissory Notes and the mortgages:

- A. The Notes were part of a Cash for cheques scheme in which no net monies were advanced.
- B. Two Notes were not signed by Hitesh and are forgeries.
- C. The Promissory Notes are void under the *Bills of Exchange Act*.³
- D. One mortgage was registered against a matrimonial home without a spouse's consent.
- E. Each note refers to a single mortgage, not multiple mortgages.
- F. The Notes do not refer to after-acquired property yet some of the mortgages were registered on such properties.
- G. Some of the mortgages were registered on properties owned by non-signatories to the Promissory Notes.
- H. Enforcement of the Notes is barred by the Limitations Act.

A. The Cash for Cheques Explanation

[14] The defendants submit that Notes 1-5 do not reflect genuine loans but are the product of what the defendants have referred to as a cash for cheques scheme devised by Joshi.

[15] Pursuant to this scheme, Hitesh and Niketa say they gave cash to Joshi in Canada⁴ and India.⁵ In exchange, Xpert Credit issued cheques in equivalent amounts to

³ Bills of Exchange Act, RSC 1985, c B-4

⁴ In relation to the transfers related to Notes 1-4.

⁵ In relation to the transfer related to Note 5.

one of the defendant companies. The net result is that nothing is owing to either party.

[16] The defendants say they participated in this scheme as a favour to Joshi who needed cash for his businesses. According to the defendants, the Promissory Notes were nevertheless signed at Joshi's request to satisfy CRA should they audit his business. The defendants say that to further the appearance of loans, Joshi asked Hitesh to give him several post-dated cheques of \$6,000 and \$4,500 to represent payment of interest on these "loans" which funds Joshi, then returned in cash.

[17] The defendants have set out a list of factors that give these allegations a potential ring of truth. By way of example they observe that:

- (i) Neither party retained a lawyer in connection with the Promissory Notes or the mortgages despite Joshi allegedly advancing \$2.6 million. The absence of counsel makes more sense if these were cash for cheque exchanges.
- (ii) Notwithstanding that Joshi has professed himself to be an experienced secured lender and mortgage broker, Joshi admits he did not undertake typical due diligence for what were supposed to be construction loans. Such due diligence would ordinarily include: obtaining details about the specific use of the loan proceeds; obtaining financial documentation concerning the construction projects; conducting title searches on the

properties; contacting any of the existing mortgagees on the properties to obtain mortgage statements; and conducting appraisals on the properties.

- (iii) Joshi did not register any mortgages or issue any demand letters until the Notes had been in default for over three years and the relationship had broken down over the Twyn Rivers purchase.

[18] The challenge with this narrative is that the defendants admitted the loans in their statement of defence and in fact defended this motion with a round of affidavits in which they admitted the loans and the Promissory Notes but defended on the basis that the Notes were intended to be unsecured and non-interest bearing (or only interest-bearing for a limited term).

[19] It was only on December 20, 2024, over a year after filing their Defence, and only a month before this motion was argued that the Defendants changed their story and advanced the cash for loans narrative.

[20] Apart from the questions this raises about withdrawing admissions; it also raises significant issues of credibility which I cannot determine on a paper record. While I do not foreclose the defendants' ability to pursue that narrative at a later stage if required, I am not prepared to hold an oral hearing under the additional powers available under Rule 20.⁶

⁶ It was *not* entirely clear whether the defendants were moving under Rule 20 for partial summary judgement or Rule 21 for the determination of an issue before trial. I therefore refer to the supplementary powers available under Rule 20 as a matter of caution. Neither side raised any objections to the potential issue of partial summary judgment. To the extent that the defendants' motion can be viewed as a partial summary judgement motion, I am

[21] This motion was originally scheduled as an urgent motion to be argued on January 29, 2024. After the parties exchanged motion records, in which the defendants acknowledged the Notes and the loans, the motion was adjourned to November 25, 2025. After the defendants changed lawyers and I became involved as case management judge, I advanced the motion to January 23, 2025, because of the serious business consequences that that a delay in arguing the motion would cause. Permitting a fundamental change in the defendants' theory only a month before the hearing and assessing that new approach with a *viva voce* hearing in short order, all to accommodate the defendants' change of theory, is an unnecessary use of party and judicial resources. At some point, the court is entitled to expect a party to lock in its approach to a motion. While the party may still be free to change its approach, it does not follow that it should be able to commandeer judicial resources on a dime to do so.

B. Allegedly Forged Notes

[22] Hitesh denies signing Promissory Notes 4 and 5 but appears to admit that there were exchanges of money pursuant to the Cash for cheques scheme as set out in Notes 4 and 5.

satisfied that it is appropriate to proceed in that way. Addressing these issues at an early stage will save both time and money for the parties. It is unlikely to result in inconsistent findings given that the question of the amounts owing on the Notes and the validity of the mortgages will be finally determined by these reasons.

- [23] Both sides have filed reports from handwriting experts to support their positions. Those reports were not referred to in the factums or in oral argument other than to point out the existence of the two reports. As a result, no one explained precisely what or how the experts concluded what they did. In those circumstances, I decline to address that issue on this motion. To the extent the authenticity of the signatures on those two Notes remains an issue after this motion, it will be addressed at trial.

C. The Notes and the *Bills of Exchange Act*

- [24] As set out in greater detail below, I have concluded that the Promissory Notes have become void under the *Bills of Exchange Act*⁷ (the “*Act*”) by virtue of Joshi’s conduct. Joshi has, in effect, changed material terms of the Promissory Notes without the consent of the signatory which voids the Notes under the *Act*.

- [25] Sections 144 and 145 of the *Act* provide:

144(1) Subject to subsection (2), where a bill or an acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized or assented to the alteration and subsequent endorser.

(2) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, the holder may avail himself of the bill as if it had not

⁷ *Bills of Exchange Act*, RSC 1985, c B-4

been altered and may enforce payment of it according to its original tenor.

145 In particular, any alteration

(a) of the date,

(b) of the sum payable,

(c) of the time of payment,

(d) of the place of payment,

(e) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally,

is a material alteration.⁸

[26] The *Act* recognizes that notes can be altered with the consent of the parties. If, however, the holder of the note makes a material change without the consent of a party, the *Act* makes the note void as against any party who did not consent to the material alteration.⁹

[27] While s. 145 of the *Act* provides five examples of alterations that are material for the purposes of s. 144, that list is not exhaustive.¹⁰ An alteration is material if it “alters the operation of the [transaction] and the liabilities of the parties, whether the change be prejudicial or beneficial.”¹¹

⁸ *Bills of Exchange Act* RSC 1985, c B-4, ss. 144-145.

⁹ *James v Chedli*, 2021 ONCA 593 at para 41; *Bank of Montreal v Riley* (1988), 90 AR 230 at para 8; *101034761 Saskatchewan Ltd v Mossing*, 2022 SKQB 193 at para 156,

¹⁰ *Clement v. Renaud*, (1956), 1 DLR (2d) 695

¹¹ *Bellamy v Porter* (1913), 28 OLR 572

[28] The mortgages are referred to in and were registered pursuant to the Promissory Notes. The mortgages were, however, inconsistent with the Promissory Notes in that they changed the following terms of the Notes:

- a. The total face amount of the Notes was \$2.6 million. The face amount of each mortgage was \$5 million.
- b. The Promissory Notes provided for interest at 18%. The mortgages provide for interest at 18.99%.
- c. The Promissory Notes were term Notes with fixed maturity dates. The Mortgages were registered as demand obligations.
- d. Some mortgages were registered against some properties the registered owners of which were not signatories to the Promissory Notes, thereby purporting to make non-signatories to the Notes liable for them.
- e. The mortgages were registered against properties that were acquired after the Notes were signed although the Notes and do not refer to the right to mortgage after acquired property thereby having the Notes extend security to property beyond that intended by the Notes.
- f. The total face amount of the Promissory Notes was \$2.6 million. The total amount of mortgages registered was \$45 million. The mortgages do not indicate that they reflect a cross collateralized debt of only \$5 million (let alone \$2.6 million).

- [29] Each of those changes is, in my view, material. None of these changes were approved by Hitesh or the corporations on behalf of which he signed the Notes.
- [30] The plaintiffs argue that the that Notes should not be voided because there was no alteration to them. At best, say the plaintiffs, the mortgages did not accurately reflect the terms of the Notes. In my view, this argument does not assist them. The Notes refer to mortgage security. That mortgage security must be consistent with the Note and is, in effect, incorporated by reference into the Note. Moreover, the Court of Appeal for Ontario has held that notes can be voided not only by changes to the notes themselves but by changes to their terms which are effected by way of collateral documents.
- [31] In *James v. Chedli*,¹² two spouses, Denis and Ana Chedli, borrowed under a promissory note. As security for the note, Ana Chedli granted a collateral mortgage against the matrimonial home of which she was the sole registered owner. Her husband consented.
- [32] After the notes fell into arrears, the lender sent a letter to the Chedlis, which made changes to the note by reducing the principal amount of the loan, changing the timing of the interest payments, and changing the note from a term note to a demand note.¹³

¹² *James v. Chedli*, 2021 ONCA 593

¹³ *James v. Chedli*, 2021 ONCA 593, at paras. 5 and 42

[33] After Mr. Chedli died, the lender commenced an action against Mr. Chedli's estate and against Ana Chedli under the note.¹⁴ The Court of Appeal found that Mr. Chedli had agreed to the changes to the note as set out in the lender's letter, but that Ana Chedli had not. As a result, the note was enforceable against the estate of the deceased husband but was not enforceable against Ana Chedli. It followed that the mortgage against the matrimonial home was therefore also unenforceable and was discharged. In doing so the Court stated:

[41] These sections make it clear that a note can be altered with the assent of all parties, and the alteration will be binding as between them. However, by making a material alteration without the assent of all the parties to the note, the note becomes void against any party who did not assent to the material alteration: Ian F.G. Baxter, *The Law of Banking, 4th ed.* (Scarborough: Thomson Canada Limited, 1992), at p. 31. The only issue in this case was whether either Dennis or Anna Chedli had assented to the alteration of the notes. It was accepted that a note could be materially altered by an agreement or a letter. Baxter states, in the context of discussing s. 144 of the *Bills of Exchange Act*, that "[o]n principle a written agreement can be varied by consent, and even by a later oral agreement": Baxter, at p. 31, fn. 189.[1] He references *Goss v. Nugent* (1833), 5 B & Ad. 58, 110 E.R. 713 (Eng. K.B.).

[42] In this case, the first note was materially altered by the appellant in his letter of November 20, 2006 to the Chedlis. He reduced the principal amount of the note from \$531,000 to \$500,000, and the timing of the interest payments on the new principal amount. The appellant acknowledged in his testimony that Anna Chedli never gave her assent to this or any subsequent changes to the first note. Therefore, in accordance with s. 144(1) of the Bills of Exchange Act, the first note is void as against Anna Chedli and unenforceable against her. Since the collateral mortgage was given only by Anna Chedli as the sole person

¹⁴ *James v. Chedli*, 2021 ONCA 593, at. Para 20.

on title to the couple's home residence, the mortgage is also unenforceable, and any potential limitation period consequences that may have arisen from the application of the Real Property Limitations Act do not arise.

- [34] If the letter in *James v. Chedli* can amount to a change to the promissory note, the mortgages in the case at bar provide an even more compelling case that they amount to a change to the Promissory Notes. The letter in *Chedli* had no detrimental effect on the borrowers. It was not presented to any third party and was not publicly registered. Indeed, in some respects, the note provided a benefit to the borrowers in that it reduced the principal amount owing on the loan. The mortgages in the case at bar, however, have had a serious detrimental effect on the defendants. The defendants are developers who depend on financing their properties in order to develop them. The existence of a total of \$45 million of debt on various properties to secure a debt with a face amount of \$2.6 million, seriously limits their ability to borrow. The plaintiffs explain that each mortgage's face amount of \$5 million reflected the approximate amount owing on the Notes at the time of registration when interest is taken into account. Even then, however, the total debt owing would be approximately \$5 million, not \$45 million. Registered debt of \$45 million is far more prejudicial to the defendants than debt \$5 million. The mortgages also present a serious impediment to selling any of the properties which is also part of the normal course business of the defendants.

[35] The policy reason underlying sections 144 and 145 of the *Act* was summarized in *Bank of Montreal v. Riley*,¹⁵ a case cited in the plaintiff's factum, as being "a perhaps stern and sometimes costly rule, firmly to discourage a practice hazardous to commercial dealings."¹⁶ In so holding, the court in *Riley* quoted from *Petro Canada Exploration Inc. v. Tormac Transport Ltd.*,¹⁷ which in turn articulated the policy more fully as follows:

The basis of the rule is stated by Jessel M.R. in *Suffell v. Bank of England* (1882), 9Q.B.D. 555 (C. A.), cited by our Court of Appeal in *Johnson v. Trobak* (supra, p. 690):

"The policy of the law has been already stated, namely, that a man shall not take the chance of committing a fraud, and when that fraud is detected recover on the instrument as it was originally made."

It is clear that the "fraud" referred to need not be a dishonest act, but may be any unauthorized alteration by which the document might be misrepresented and which, if unexplained, might have prejudiced its maker. The policy of the law is, by a perhaps stern and sometimes costly rule, firmly to discourage a practice hazardous to commercial dealings.¹⁸

[36] The policy is therefore motivated by concerns that material changes which, if unexplained, can misrepresent the actual agreement and might prejudice the debtor. It is meant to "discourage a practice hazardous to commercial dealings."

¹⁵ *Bank of Montreal v. Riley*, 1988 CanLII 3875

¹⁶ *Bank of Montreal v. Riley*, 1988 CanLII 3875 at para. 9.

¹⁷ *Petro Canada Exploration Inc. v. Tormac Transport Ltd.*, 1983 CanLII 465 (BC SC), [1983] 4 W.W.R. 205 (B.C.S.C.),

¹⁸ *Petro Canada Exploration Inc. v. Tormac Transport Ltd.*, 1983 CanLII 465 (BC SC), [1983] 4 W.W.R. 205 (B.C.S.C.) at para. 23.

[37] Those policy considerations arise here. Registering debt of \$45 million when the actual debt is at best \$5 million is likely to prejudice a debtor if unexplained. Mortgage registrations can explain such discrepancies by making clear that the \$5 million debt is cross collateralized against other security. In addition, apart from the factors referred to in paragraph 29 above that change the terms of the Notes, Joshi engaged in other practices “hazardous to commercial dealings” when registering the mortgage including the following:

- a. Joshi registered the mortgages even though none of the purported mortgagors signed acknowledgments and directions to permit the registration of the mortgages.
- b. Joshi knowingly registered a mortgage on Hitesh’s and Niketa’s matrimonial home without obtaining Niketa’s consent.
- c. The mortgages refer to standard charge terms that were never given to the purported mortgagors and to which they had never agreed.
- d. When registering the Mortgages, Joshi made the following false declarations:

“A person or persons with authority to bind the corporation has/have consented to the **registration of this document.**”

“The Chargor(s) acknowledges the receipt of the charge and the standard charge terms.”

“I have the authority to sign and register the document on behalf of the Chargor(s).”

e. Joshi knew or ought to have known that he was not authorized to register the Mortgages through Xpert Law Inc.'s TeraView account, without the assistance of a lawyer. Joshi admitted that he had never registered any other mortgages through Xpert Law aside from the 10 at issue on this motion, even though he had been acting as a mortgage broker for 15 years when he registered the mortgages.

[38] That all constitutes conduct that warrants deterrence to ensure, in the words of *Suffell v. Bank of England* that a “man shall not take the chance of committing a fraud, and when that fraud is detected recover on the instrument as it was originally made.”

[39] Some may think the application of the rule harsh. Indeed, Joshi justified the informality in his dealings by explaining that Niketa “had plucked at my heartstrings” in persuading him to enter into a religious Hindu kinship relationship known as the Raksha Bandhan. He further explained that once this ritual is performed his community views the man and woman as family and that he and Niketa introduced themselves as brother and sister and that he referred to Hitesh as his brother-in-law to members of their community.

[40] I am not persuaded by this explanation. In *McKenzie-Barnswell v. Xpert Credit*,¹⁹ Justice Carole J. Brown described a similar relationship that Joshi had entered into

¹⁹ *McKenzie-Barnswell v. Xpert Credit*, 2021 ONSC 4007

with another woman whom he had known for 15 years who consider him as a brother and his children refer to him as uncle. Despite that relationship, in that case, Joshi registered mortgages immediately on advancing funds and immediately and forced his loan when it went into default.

[41] It is also worth bearing in mind that Joshi drafted both the Promissory Notes and the mortgages. The first Promissory Note is dated June 11, 2020, by which point, Joshi had 12 years experience as a mortgage broker and could be assumed to be familiar with the law of promissory notes and mortgages. Indeed, on cross-examination he described himself as having “deep knowledge of real estate transactions and mortgage brokering and all the paperwork that goes with it.” In addition, Joshi’s wife is a real estate lawyer with her own law firm. He therefore had far easier access to legal expertise than most.

[42] As a result of the foregoing, I find that the Promissory Notes are voided by virtue of section 144 of the *Act* and that the mortgages that the plaintiffs have registered on the various properties are therefore also void and must be discharged.

D. Matrimonial Home Issue

[43] One of the properties against which Joshi registered a mortgage is 9 Ridgevale Drive in Markham, Ontario. The mortgage on this property is purportedly registered pursuant to each of the Promissory Notes with language to the effect that:

**THE UNDERSIGNED BORROWERS FURTHER
ACKNOWLEDGE AND AGREE THAT** this borrowing of
[amount of note is specified] is collaterally secured by 2nd/3rd
Mortgage charge or a Lien on the borrower's residential
property at 9 Ridgevale Dr., Markham, ON L6B 1A8.

- [44] The property at 9 Ridgevale Drive is registered in the names of Hitesh and Niketa as joint tenants.
- [45] A transfer of title or a registration of a mortgage on a property held as a joint tenancy requires both joint tenants to agree to the transfer or charge. Niketa did not sign any of the Promissory Notes or any of the mortgage documents. As a result, the Joshi mortgage over the Ridgevale property is invalid.²⁰
- [46] In addition, Joshi knew that Hitesh and Niketa were married and knew that they lived together at the Ridgevale property. He therefore knew that the Ridgevale property was their matrimonial home.
- [47] Section 21(1)(a) of the *Family Law Act*²¹ prohibits the encumbrance of a matrimonial home without both spouses joining in or “consenting” to the transaction.
- [48] Section 21(2) of the *Family Law Act* provides that a transaction that contravenes section 21(1) may be set aside, unless the person holding the encumbrance

²⁰ *Shute v Premier Trust Co* (1993), 50 RFL (3d) 441 at para at para 39.

²¹ *Family Law Act*, RSO 1990, c F.3

acquired it for value, in good faith, and without notice that, at the time of acquiring it, the property was a matrimonial home.²²

[49] The plaintiffs object to the application of these provisions because they say there is no application under the *Family Law Act*. That puts form over substance. The plaintiffs have not advanced any reason for which the court would not set aside the mortgage on the basis that it purports to encumber a matrimonial home without the consent of Niketa. I can think of no ground on which the plaintiffs could resist such an application given that they are the mortgagees, they knew that the property was a matrimonial home, and they knew that Niketa had not signed the Promissory Note or the mortgage.

D. Reference to a Singular Property

[50] As already noted, Joshi has registered 9 mortgages against 10 properties, each for the collective amount owing on all of the Promissory Notes. My reading of the Notes does not permit him to do so. Assuming the Notes were not voided, each Note would, on my reading, entitle Joshi to register a single mortgage limited to the amount owing on the Note in question. I turn now to examine the language of the Notes in this regard.

[51] Notes 1, 2, and 3 provide:

²² *McCaskie v McCaskie* (2002), 113 ACWS (3d) 710 at para 31

"this borrowing of [...] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B JA8."

"The undersigned borrowers authorize Lender to register a 2nd/3rd Mortgage Charge or Lien on my above residential property **or any other property** in its favour..." (emphasis added)

[52] The authorization is to "register a 2nd/3rd Mortgage", it is not to register mortgages.

The single mortgage can be registered against either 9 Ridgevale Drive "**or** any other property", but not both.

[53] Notes No. 4 and 6 each contain slightly different wording but evidence a similar intention. Note 4 provides:

"this borrowing of [...] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B 1A8 **or any properties** own (*sic*) by us or by companies or our (*sic*) any of the corporations."

"Borrowers authorize lender to register a 2nd/3rd mortgage or 4th mortgage charge or a Lien on my above residential property **or any other property** in its favour..." (emphasis added).

[54] Note 6 provides:

"this borrowing of [...] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B JA8 **or any other properties** own (*sic*) by us or by our companies."

"Borrowers authorize Lender to register a 2nd/3rd Mortgage Charge or Lien on my above residential property **or any other property** that we or our companies owns ...

[55] In both Notes 4 and 6 the operative language again authorizes “a 2nd/3rd Mortgage”, not mortgages; and authorizes registration against either 9 Ridgevale Drive “**or** any other property”.

[56] Note No. 5 has different wording in that it refers to properties in the plural in both paragraphs that refer to the mortgage. It provides:

"this borrowing of [...] is collaterally secured by 2nd/3rd mortgage charge or a lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B 1A8 **or any properties own** (*sic*) by us or by companies or our (*sic*) any of the corporations."

"borrowers authorize lender to register a 2nd/3rd mortgage or 4th mortgage charge or a lien on my above residential property **or any other properties own** (*sic*) **by borrowers of** (*sic*) **their companies** in its favour ..." (emphasis added)

[57] To the extent that Notes 4, 5 and 6 are seen to be ambiguous because they refer to “properties” at certain points, the principle of *contra proferentem* applies to resolve any such ambiguity in the borrowers’ favour because Joshi drafted the Notes. That said, these Notes are not, in my view, ambiguous. The first quoted subparagraph in all Notes refers to the borrowing being secured by *a mortgage* and that such singular mortgage can be registered against 9 Ridgevale Dr. *or* any other properties owned by companies the signatory owns. The reference to “properties” in the plural does not mean that multiple mortgages can be registered but, rather that a single mortgage can be registered on a single property which can be chosen from a defined pool. If it were intended to be otherwise, the Notes would provide that the lender can register a mortgage against 9 Ridgevale *and* any other properties the borrower’s companies own.

E. After Acquired Properties

[58] The plaintiffs registered mortgages against, among other properties, 1717 Brock Street South, 133 Franks Way, 82 Bagot Street, 1 Ferguson Avenue.

[59] As a general rule, any security a debtor offers refers only to property that a debtor owns at the time security was promised, unless the security agreement or loan provides that it captures after acquired property.²³

[60] Promissory Notes #1-3 predate the purchase of 133 Franks Way, 82 Bagot Street and 1 Ferguson Avenue. Promissory Notes #1-5 predate the purchase of 1717 Brock Street South. The mortgages on those properties are therefore additionally invalid insofar as they purport to secure after-acquired property.

F. Corporate Personality

[61] Although each of the six Promissory Notes is signed by Hitesh, he signed them on behalf of different corporate signatories. A corporation is not liable on a promissory signed by its principal unless the corporation itself is referred to as being liable in the note.²⁴

[62] Three of the properties against which the plaintiffs have registered mortgages, 1 Ferguson Avenue, 1717 Brock Street South and 10 Doric Street are owned by

²³ *Grillo v. Spadafora*, 2024 ONSC 1712 at paras. 12, 60-62.

²⁴ *2169460 Ontario Limited et al v Dass et al*, 2019 ONSC 6599 at paras 40-41.

companies that are not referred to in the Promissory Notes.²⁵ As a result, those mortgages are invalid and must be discharged.

G. Limitations Issue

[63] The defendants submit that the plaintiffs' claims are time-barred because each of the Notes had a maturity date and because this action was not commenced within two years of the maturity date. I am not prepared to make a finding in that regard on this motion.

[64] On May 14, 2022, Hitesh forwarded an email to Joshi enclosing an accounting prepared and sent by an employee of Osmi. The accounting sets out the principal amounts outstanding and shows total principal advances from the Plaintiffs in the amount of \$6 million, with corresponding cash payment setoffs of \$343,776 - for a total "net received" of \$5,356,224.00.

[65] This action was commenced November 24, 2023 – less than two years after Hitesh sent the accounting to Joshi.

[66] The defendants raise a number of issues about the accounting including what it means and whether it amounts to a sufficiently clear acknowledgement of a debt to forestall the limitation period.

²⁵ Inuka Developer Inc., 2145499 Ontario Inc. and Osmi9 Ltd.

[67] In my view, those issues raise genuine issues for trial that should be determined on a full record and with the benefit of *viva voce* evidence. It is not an issue I am prepared to address through the use of supplementary fact-finding powers under Rule 20.

III. Claim For Equitable Mortgages

[68] If the existing mortgages are found to be invalid, the plaintiffs move for equitable mortgages on the same properties. In addition, the plaintiffs move for equitable mortgages on the properties listed in Appendix A to these reasons. An equitable mortgage is, like its name suggests, an equitable remedy which “creates a charge on a property where there has been a failure to transfer a legal estate in the property to an intended mortgagee.”²⁶

[69] I decline to grant equitable mortgages with respect to those properties on which the plaintiffs have already registered mortgages. Those mortgages have been voided by the plaintiffs’ conduct and the operation of the *Bills of Exchange Act*. Given that the *Act* has voided the plaintiffs’ Promissory Notes, there is no longer any interest in respect of which to grant an equitable mortgage. It would be the

²⁶ *Mohammed v Makhlouta*, 2020 ONSC 7494 at para 18, and *Shute v Premier Trust Co*, *supra* note 61 at para at para 46 and 48.

opposite of equity to now override the provisions of the *Act* by imposing equitable mortgages to replace those that have been voided by the *Act* itself.

[70] The plaintiffs would also be precluded from obtaining equitable mortgages by the unclean hands principle. The unclean hands principle is triggered by misconduct that has an “immediate and necessary relation to the equity sued for”.²⁷

[71] Here, the principle arises in relation to the plaintiffs’ conduct with respect to the mortgages that they want to replace with equitable mortgages if necessary. The registration of those mortgages was marked by significant misconduct on the part of the plaintiffs, as set out in paragraphs 28 and 37 above which would disentitle them to equitable relief.

[72] I recognize that “unclean hands” do not automatically disentitle a party to a remedy and that the court retains discretion to grant relief.²⁸ As already noted, I decline to grant any relief here in circumstances where the equitable relief would only be required because Joshi’s conduct in relation to a legal remedy has disentitled him to legal relief.

[73] The plaintiffs also seek equitable mortgages in relation to 11 additional properties set out at Appendix A to these reasons. Three of those 11 properties are owned by people or entities that signed Promissory Notes.²⁹ I am not prepared to grant

²⁷ 2324702 *Ontario v. 1305 Dundas*, 2019 ONSC 1885, at para 20.

²⁸ *Hrvoic v. Hrvoic*, 2023 ONCA 508 at para. 18.

²⁹ Properties 8, 9, and 10 on Appendix A.

equitable mortgages with respect to those properties for the same reason that I decline to grant equitable mortgages on the properties on which the plaintiffs registered mortgages which I have found to be invalid.

[74] An additional three properties are owned by corporations which are owned by Hitesh and Niketa that are not signatories to the Notes.³⁰ As indicated earlier, corporations that are not signatories to the Notes cannot be bound by them. In the absence of an agreement by such corporations to be responsible for a debt, I have been given no basis for equitable relief against them either. One further property is owned by Hitesh and Niketa jointly.³¹ Given my findings about the need to have both joint tenants agree to an encumbrance in paragraphs 44-45 above, and given that Niketa was never asked to assume responsibility for any of the debt, I do not see how, without more, I can impose an equitable mortgage on that property.

IV. Claim for Certificates of Pending Litigation

[75] If the plaintiffs do not obtain equitable mortgages, they seek certificates of pending litigation on the 10 properties against which they have registered mortgages and on 11 additional properties listed in Appendix A. Four of the properties on Appendix A are owned by Bay 20 Inc. or Akkina Developers Inc. I will address the claim to those four properties later in these reasons.

³⁰ Properties 1, 7 and 11 on Appendix A.

³¹ Property 2 on Appendix A.

[76] The plaintiffs seek certificates of pending litigation pursuant to s. 2 of the *Fraudulent Conveyances Act*, which provides:

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[77] To obtain a certificate of pending litigation under s. 2 of the *Fraudulent Conveyances Act*, the moving party must demonstrate that:

(i) there is high probability that the claimant will successfully recover judgment in the main action;

(ii) there is evidence demonstrating that the transfer was made with the intent to defeat or delay creditors; and

(iii) the balance of convenience favours issuing a certificate of pending litigation in the circumstances of the particular case.³²

i. Probability of Recovering Judgment

[78] Given that the Promissory Notes have been voided, there is little probability of the plaintiffs recovering judgment unless my conclusions are overturned on appeal.

[79] Even had I not voided the Promissory Notes, there was little possibility of the plaintiffs recovering a judgment equal to the \$45 million in mortgages they had

³² *Toronto Dominion Bank v Nejad*, 2023 ONSC 3969, paras. 17-19.

registered. They had at best a claim to a principal debt of \$2.6 million. With interest that may have risen to approximately \$5 million by the time of the motion. Even that, however, would lead to a more tenuous claim for certificates of pending litigation against the properties because the plaintiffs' interest would have been limited to one property per Note, properties owned by signatories to the Notes, properties owned when the Notes were signed and would have excluded the Ridgevale property because it was a matrimonial home the encumbering of which Niketa never consented to.

ii. Evidence of Transfers to Defeat or Delay Creditors

[80] The plaintiffs point to a number of sources of evidence that they say amount to evidence of transfers to defeat or delay creditors.

[81] They note that Hitesh transferred 1 Ferguson Avenue from Osmi Homes to Inuka Inc. and obtained a mortgage of \$1.6 million against 1 Ferguson. The parcel register for the Ferguson property discloses no such transfer from Osmi. Rather, it discloses a transfer from Symmban-Ibi Developments Inc. to Inuka. I was not taken to any evidence to suggest that Symmban is a non-arm's-length entity from the defendants. The mortgage referred to was registered the same day that Inuka purchased the property. There is nothing unusual about that. Most purchasers of real estate do so with the assistance of a mortgage that is registered at the time of purchase. In addition, Inuka was not a signatory to any of the Promissory Notes.

- [82] The plaintiffs also allege that the defendants purchased the Ferguson Avenue property using money from one of the Promissory Notes. A certificate of pending litigation on that property would therefore amount to security in relation to a Note that has been voided.
- [83] The plaintiffs further assert that Hitesh told them that if they removed their mortgage from 23 Madison Avenue, Hitesh would finance that property to obtain funds to pay off the Home Trust mortgage on the Twyn Rivers Property and allow the Twyn Rivers purchase to close. The Plaintiffs discharged the mortgage from 23 Madison, Hitesh proceeded to obtain a \$1.5 million mortgage on that property, but then failed/refused to use those funds to discharge the Home Trust Mortgage.
- [84] The defendants say that the proposal the parties discussed was that the plaintiffs would discharge all 10 mortgages in exchange for which the defendants would transfer the Twyn Rivers property to the plaintiffs but that the plaintiffs discharged only the Madison Avenue property. The fact that the defendants placed a mortgage on the Madison Avenue property is not evidence of an intent to defeat or delay creditors given that the defendants are developers who regularly

mortgage their properties to finance their business. Moreover, the real issue in the plaintiffs' explanation is whether the Twyn Rivers property should be transferred to them and, if so, on what terms. That, however, is not the subject of this motion.

[85] As further evidence of an intention to defeat or delay creditors, the plaintiffs assert that Hitesh concealed his assets from the Plaintiffs by failing to disclose that he was an officer, director, and shareholder of several other companies. Upon learning of these companies, the Plaintiffs proceeded to register cautions on the Properties owned by them. Twelve days after the cautions were discharged, the Defendants obtained a \$2.3 million mortgage against one or more of those properties.

[86] I do not accept this as evidence of an intention to defeat or delay creditors. The Notes do not require Hitesh to give Joshi details about his involvement in any companies nor did Joshi ever ask for this information. It would have been common for a lender to ask for a statement of assets. Joshi never did so. Nor did Joshi ever seek any undertaking to make after-acquired property the subject of the Promissory Notes or any security under them. This is particularly salient given that Joshi knew that Hitesh was a developer who purchased, sold, and mortgaged properties in order to finance and develop them. Even with that knowledge, Joshi never sought a right of consent before the defendants could place further encumbrances on their properties. This too would have been a not uncommon provision in a lending agreement.

[87] Moreover, Joshi was aware that, until he registered any mortgages to which the Promissory Notes entitled him, further mortgages could be registered against those properties in priority to his but chose not to register mortgages until up to three years after he says he extended loans.

iii. The Balance of Convenience

[88] In my view, the balance of convenience militates against granting certificates of pending litigation.

[89] The plaintiff seeks certificates of pending litigation on the 10 properties on which they registered mortgages and on an additional 7 properties from Appendix A.³³ The underlying basis for the claims on these additional properties is also the debt reflected in the Notes. As noted earlier, granting certificates of pending litigation because of the indebtedness under the Notes would defeat the point of voiding the Notes and discharging the mortgages.

[90] Finally, the plaintiffs did not direct me to any evidence about the value of the various properties or prior encumbrances on them. I therefore have no way of knowing how many properties would have to be subject to certificates of pending to protect the plaintiffs if the Notes remained valid. This tips the balance of convenience further in favour of the defendants.

³³ Appendix A contains a list of 11 properties from which I subtract the 4 properties owned by Bay 20 and Akkina that are addressed later in these reasons.

V. Claims Against Bay 20 and Akkina

- [91] The plaintiffs also claim equitable mortgages and certificates of pending litigation against four additional properties on Appendix A that are owned by Bay 20 Inc. and Akkina Developers Inc. In addition to declining that relief because the Promissory Notes have been voided, I would decline relief against Bay 20 and Akkina for the further reasons set out below.
- [92] Neither Bay 20 nor Akkina are parties to any of the Promissory Notes. Joshi admits that he did not learn that Hitesh was a shareholder of Bay 20 and Akkina until after he commenced litigation in November 2023.
- [93] The Plaintiffs' claims for equitable mortgages and certificates of pending litigation against properties owned by Bay 20 and Akkina requires a "reverse" corporate veil piercing, which would hold those corporations responsible for the obligations of Hitesh and/or Niketa.
- [94] Although rare, courts have allowed "Reverse" corporate veil piercing where the shareholder has fraudulently used the corporation to shield assets from creditors and avoid the shareholder's personal obligations.³⁴ Courts will disregard the corporate veil where a corporation is being used as an alter ego of a shareholder,

³⁴ *Stevens v. Hutchens*, 2024 ONCA 717, at para 13; *Wildman v. Wildman* (2006), 2006 CanLII 33540 (ON CA), at paras. 23-25 and 43-46; *Borden Ladner Gervais v. Sinclair et al.*, 2013 ONSC 7640, at paras. 17-20.

is completely dominated and controlled by the impugned shareholder(s) or is being used as a shield for fraudulent or improper conduct.³⁵

[95] As set out in greater detail below, there is no evidence that Bay 20 or Akkina are alter egos of Hitesh and/or Niketa, that either corporation is completely dominated and controlled by Hitesh and/or Niketa or that either corporation is being used for fraudulent or improper conduct.

[96] Hitesh and Niketa are each 25% shareholders and directors of Bay 20. The remaining 50% of Bay 20's shares are owned by Ahmed Khan who is also a director of Bay 20.

[97] Bay 20 owns two properties listed on Appendix A: 214 David Street in Chelmsford, and 38 Pearl Street in Sudbury. Khan negotiated and executed the agreement of purchase and sale for 214 David St. in November 2017 in trust for a company to be incorporated. Khan later approached Hitesh and invited him to invest in the property with him. Bay 20 was then incorporated for the purpose of purchasing 214 David St.

[98] The agreement of purchase and sale for 38 Pearl Street was signed by both Khan and Hitesh on behalf of Bay 20.

[99] Bay 20 purchased 38 Pearl St. in July 2022.

³⁵ *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 1996 CanLII 7979 (ON SC), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.) at pp. 433-434; *FNF Enterprises Inc. v Wag and Train Inc.* 2023 ONCA 92 at para 18.

[100] Since Bay 20 acquired the properties, the shareholders have contributed to mortgage expenses and other property-related costs in proportion to their shareholdings. Hitesh and Khan have made decisions about Bay 20 and its properties jointly.

[101] Khan has invested hundreds of thousands of dollars into Bay 20 and its properties since Bay 20 was incorporated. Khan has completed the majority of the property management tasks for 214 David St. and 38 Pearl St. since Bay 20 acquired them. Khan personally guaranteed the mortgages registered against both properties.

[102] Hitesh did not have the authority to grant a security interest over any property owned by Bay 20 without Khan's knowledge and consent. Khan did not know of the Promissory Notes until August or September 2023.

[103] Assuming the Promissory Notes could bind Bay 20 by virtue of the language in some of the Notes that purports to bind companies owned by Hitesh even though the company is not mentioned in the Notes, in my view, a company in which Hitesh holds a 25% interest does not fall into the category of companies "owned by" Hitesh or into the category of "our companies" referred to in the Promissory Notes.

[104] Akkina follows a similar pattern.

[105] Since Akkina was incorporated, Niketa and Hitesh have each owned 25% of its shares with the remaining 50% owned by Navichandra Patel. All three shareholders are directors.

- [106] Akkina is the registered owner of 2825 York Durham Line, Pickering and 151 Cedar Crest Beach Road, Clarington. Patel identified both properties as potential investments and presented them to Hitesh and Niketa as a joint investment.
- [107] 2825 York is a 5-acre parcel of vacant farmland. The plan is to seek municipal approval to build five single detached homes on the property. Akkina was incorporated to purchase 2025 York. 151 Cedar St is a rental property.
- [108] Decisions about Akkina's properties are made jointly.
- [109] Patel has invested hundreds of thousands of dollars of his personal retirement savings into Akkina and its properties since incorporation. Patel has also personally guaranteed the mortgages registered against the York and Cedar properties.
- [110] Patel has never met nor spoken to Joshi. Patel did not know of the Notes until the Plaintiffs brought a motion to add Akkina as a defendant to this action in June 2024.
- [111] There is no evidence that Bay 20 or Akkina have engaged in fraudulent or improper conduct which has given rise to the liabilities that the Plaintiffs seek to enforce. Bay 20 and Akkina purchased their respective properties as part of legitimate business ventures. I have not been directed to any evidence which suggests that the properties were purchased or improved using monies obtained from the Plaintiffs.

[112] Despite whatever arrangements may have been made about joint decision-making within Bay 20 or Akina, the plaintiffs submit that both corporations are bound by the indoor management rule. The plaintiffs say that as 50% shareholders and directors of Bay 20, and Akkina, there can be no doubt that Hitesh and Niketa had actual authority to bind the corporations. The plaintiffs argue further that if Hitesh lacked the actual authority to bind the corporations, he nevertheless had apparent authority to do so by virtue of s. 19 of the *OBCA* which provides:

A corporation or a guarantor of an obligation of a corporation may not assert again a person dealing with the corporation or with any person who has acquired rights from the corporation ...

There then follow a number of things that the corporation cannot deny based on its publicly filed documents one of which is that:

(d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;

[113] The plaintiffs then say that the effect of the rule is to hold that:

Where an outsider dealing with a corporation satisfies himself that the transaction is valid on its face to bind the corporation, he need not inquire as to whether all of the preconditions to validity that the corporation's internal law might call for have in fact been satisfied.³⁶

³⁶ *Business Organizations, Practice, Theory and Emerging Challenges*, Robert Yalden et al. Chapter 5: Corporate Contractual Liability, section (iii) Post-Incorporation Contracts, paragraph (B) Compliance with Internal Procedures, at page 381.

[114] The plaintiff's use this rule to support the proposition that they reasonably believed that Bay 20 and Akkina would be bound by the Promissory Notes and the mortgage obligations contained in them.

[115] I do not accept that submission. In addition to the fact that, as set out earlier in these reasons, the Promissory Note cannot bind a party that is not a signatory, Joshi was not aware of Bay 20 or Akkina when he took the Promissory Notes and had no basis for believing that Hitesh was acting as an officer or director of those corporations when executing the Notes. The indoor management rule presupposes that the party relying on it believes it is dealing with a specific corporation and that the person with whom it is dealing has the power to bind the corporation. Joshi had no basis for believing that he was dealing with Bay 20 or Akkina, as a result of which the rule has no application.

[116] The plaintiffs further suggest that at least Bay 20 has been engaging in improvident transactions which suggest wrongdoing because it listed both 214 David St. and 38 Pearl St. for sale last year for \$1.00. Bay 20 has explained that the listing price was designed to generate interest in the properties and determine what price could be generated for them. Both properties were later taken off the market because Bay 20 failed to receive an acceptable offer.

[117] The plaintiffs also extend their allegations of wrongdoing to the proposed Defendant, BIP Management Corporation ("BIP"). BIP has provided financing to the defendants, Bay 20 and Akkina for several of their projects. BIP has an interest in the motion because the plaintiffs seek mortgages or certificates of pending


litigation against a number of properties in respect of which BIP has provided financing and has registered mortgages. More particularly, the plaintiffs allege that Bay 20 and Akkina have fraudulently conveyed their interests in their properties to BIP with the intention of defeating, hindering, or delaying creditors. I do not accept that as evidence of a fraudulent conveyance. Being a mortgagee does not, without more, mean being the beneficiary of a fraudulent conveyance.

[118] On cross-examination, Joshi admitted that he has no evidence that funds advanced under the Notes were used for the benefit of the Bay 20 or Akkina properties. Indeed, Bay 20 purchased the David Street property 1 ½ years before Joshi met Hitesh and 2 ½ years before the plaintiffs advanced any of the alleged loans. Joshi's only basis for believing BIP was involved in wrongdoing is that it was lending funds to some of Hitesh's investments and that Hitesh is "friends with them." When asked what evidence he had to suggest that BIP was anything more than arm's-length lender, Joshi answered that: they are very good friends, BIP had registered mortgages, it was a cozy relationship. Joshi agreed however that a friendship between a mortgagor and mortgagee does not mean that the relationship is illegitimate. When Joshi was asked what evidence he had of the conspiracy he alleges between BIP and the defendants, his counsel answered that there was no such evidence, but that BIP had not yet defended and the plaintiffs expected to elicit further evidence on discovery. As a result of the foregoing, on the record before me, the relationship between the BIP and the defendants is that of an arm's-length lender in respect of which I draw no adverse inference.

Conclusion and Costs

[119] For the reasons set out above, I declare the six Promissory Notes to be void under the *Bills of Exchange Act*, order the mortgages registered on the 10 properties pursuant to those Promissory Notes to be vacated,³⁷ and dismiss the claims for an equitable mortgage or certificates of pending litigation on any of the properties in respect of which the plaintiffs have requested such relief.

[120] Any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party will have two weeks to deliver its answer with a further one week for reply.



Koehnen J.

³⁷ In case of any doubt, the 10 properties are listed at paragraph 40 of the defendants' factum on this motion.

APPENDIX A

#	Municipal Address	Is the Property Listed as Security in the Promissory Note	Owner	Is the Owner a Borrower under the Promissory Notes	Date Acquired by Owner	Were the Promissory Notes Executed After the Property was Acquired?
1	66 Bramhall Circle, Brampton	No	Osmi Inc.	No	December 15, 2022	#1-5 – Before #6 – After
2	49 Wayland Avenue, Toronto	No	Hitesh and Niketa	Only Hitesh. Niketa is not.	January 28, 2022	#1-5 – Before #6 – After
3	2825 York Durham Line, Pickering	No	Akinna Developments Inc.	No (and Akinna is 50% owned by a 3 rd party)	November 30, 2021	#1-5 – Before #6 – After
4	151 Cedar Crest Road, Clarington	No	Akinna Developments Inc.	No (and Akinna is 50% owned by a 3 rd party)	March 15, 2024	Before
5	214 David Street, Chelmsford	No	Bay 20 Inc.	No (and Bay 20 is 50% owned by a 3 rd party)	January 31, 2018	After
6	38 Pearl Street, Sudbury	No	Bay 20 Inc.	No (and Bay 20 is 50% owned by a 3 rd party)	July 15, 2022	#1-5 – Before #6 – After
7	45 Harwood Avenue, Ajax	No	Zahur Developers Inc.	No	April 6, 2022	#1-5 – Before #6 – After
8	158 Hillcrest Drive, Whitby	No	Barakaa Developer Inc.	Yes, but only under Promissory Note #5	June 9, 2017	After
9	160 Hillcrest Drive, Whitby	No	Barakaa Developer Inc.	Yes, but only under	June 9, 2017	After

				Promissory Note #5		
10	245 Spillsbury Drive, Peterborough	No	Lerrato Inc.	Yes, but only under Promissory Notes #1, 2, 6.	October 3, 2011	After
11	225 Collins Street, Collingwood	No	Osmi Inc.	No	April 29, 2022	#1-5 – Before #6 – After ³⁸

³⁸ Comparison of Plaintiff's Amended Notice of Motion as Against the Promissory Notes.

CITATION: CITATION: Joshi et al. v. Osmi Homes Inc. et al. 2025 ONSC 1942
COURT FILE NO.: CV-23-00710241
DATE: 20250327

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SANJIVE JOSHI and XPERT CREDIT CONTROL
SOLUTIONS INC.

Plaintiffs

– and –

OSMI HOMES INC., HITESH RAJENDRA
JHAVERI, LERRATO INC., OSMI9 LTD,
BARAKAA DEVELOPER INC., INUKA
DEVELOPER INC., 2145499 ONTARIO INC. and
NIKETA JHAVERI

Defendants

REASONS FOR JUDGMENT

Koehnen J.

Released: March 27, 2025



Court File No. CV-23-00710241-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

THURSDAY, THE 27th

)

JUSTICE KOEHNEN

)

DAY OF MARCH, 2025

B E T W E E N:

SANJIVE JOSHI and XPERT CREDIT CONTROL SOLUTIONS INC.

Plaintiffs

- and -

**OSMI HOMES INC., HITESH RAJENDRA JHAVERI, LERRATO INC.,
OSMI9 LTD, BARAKAA DEVELOPER INC., INUKA DEVELOPER INC.,
2145499 ONTARIO INC. and NIKETA JHAVERI**

Defendants

ORDER

THIS MOTION, made by the Defendants, Osmi Homes Inc., Hitesh Rajendra Jhaveri, Lerrato Inc., Osmi9 Ltd., Barakaa Developer Inc., Inuka Developer Inc., 2145499 Ontario Inc. and Niketa Jhaveri (collectively, the “**Defendants**”) to determine what amount, if any, the Defendants owe to the Plaintiffs under six Promissory Notes described in Schedule “A” hereto and an order striking out the mortgages described in Schedule “C” herein (individually a “**Mortgage**” and collectively, the “**Mortgages**”), a cross-motion brought by the Plaintiffs, Sanjive Joshi and Xpert Credit Control Solutions Inc. (collectively the “**Plaintiffs**”) for a determination of whether they are entitled to a registered mortgage, an equitable mortgage, or alternatively leave to register certificates of pending litigation against the properties described Schedule “B” herein (individually, a “**Property**” and collectively, the “**Properties**”) as well as the properties owned by

the Defendants and other non-parties listed in Schedule “D” herein (the “**Additional Properties**”), was heard on January 23, 2025 virtually, at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Records of the Defendants dated December 21, 2023, January 8, 2024, December 20, 2024 and January 14, 2025, the Motion Records of the Plaintiffs dated January 3, 2024, December 19, 2024 and January 10, 2024, and the Motion Records of the non-parties, Bay 20 Inc. and Akkina Developers Inc., and BIP Management Corporation, dated January 10, 2025 (the “**Non-Parties**”, and collectively with the Plaintiffs and Defendants, the “**Parties**”), the transcripts from cross-examinations of the Parties, and on hearing submissions by counsel for the Parties, judgment being reserved to this day,

1. **THIS COURT ORDERS AND DECLARES** that the Promissory Notes described in Schedule “A” are void and there is no indebtedness owed by the Defendants or the Non-Parties to the Plaintiffs under the Promissory Notes.

2. **THIS COURT ORDERS AND DECLARES** that the Mortgages described in Schedule “C” registered against the Properties described in Schedule “B” are void and are struck out.

3. **THIS COURT ORDERS** that upon the registration of an Application to Register this Order in the applicable Land Registry Office for each of the Properties, the Land Titles Registrar for such Land Registry Office is hereby directed to delete and expunge from title to the applicable Property described in Schedule “B” the applicable Mortgage referred to in Schedule “C” attached hereto.

4. **THIS COURT ORDERS** that upon deletion of the applicable Mortgage against the applicable Property, the Land Registrar is further directed to delete and expunge this Order from title to the applicable Property.

5. **THIS COURT ORDERS** that the Plaintiffs' motion for a declaration that the Plaintiffs hold equitable interests, mortgages or equitable mortgages in or against the Properties and the Additional Properties is dismissed.

6. **THIS COURT ORDERS** that the Plaintiffs' motion for leave to issue and register certificates of pending litigation against title to the Properties and the Additional Properties is dismissed.

7. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable prior to its entry or filing.

8. **THIS COURT ORDERS** that any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party to such cost submissions will have two weeks to deliver its answer on costs. There will be a further one week for reply costs submissions.



SCHEDULE “A”

Promissory Note #	Date	Lender	Borrower	Amount
1	June 11, 2020	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes, Lerrato	\$ 400,000
2	July 31, 2020	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes, Lerrato	\$ 400,000
3	August 25, 2020	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes	\$ 300,000
4	August 4, 2021	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes	\$ 400,000
5	September 13, 2021	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes, Lerrato, Barakaa	\$1,000,000
6	June 8, 2023	Sanjive Joshi and Xpert Credit Control Solutions Inc.	Hitesh Jhaveri, Osmi Homes, Lerrato	\$ 100,000

SCHEDULE “B”

PIN: 03206-4245 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: LOT 741 AND PART LOTS 740 AND 742, PLAN 133, PART 2, PLAN 65R38228

Address: 23 Madison Avenue, Richmond Hill, Ontario

PIN: 03206-4246 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: LOT 743 AND PART LOT 742, PLAN 133, PART 1, PLAN 65R38228

Address: 25 Madison Avenue, Richmond Hill, Ontario

PIN: 26575-0039 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 100 PL H50053 WHITBY; PT LT 101 PL H50053 WHITBY AS IN D177705;
WHITBY

Address: 82 Bagot Street, Whitby, ON

PIN: 26486-0010 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 11 BLK 1 PL H50035 WHITBY; PT LT 12 BLK 1 PL H50035 WHITBY PT 1,
40R7004; WHITBY

Address: 1717 Brock St Street, Whitby, ON

PIN: 26452-0789 (LT)

Interest/Estate Fee Simple

LT ABSOLUTE PLUS

Description: PART LOTS 108, 109, 110 AND 111 PLAN 377, PARTS 1 AND 2 PLAN 40R30571; SUBJECT TO AN EASEMENT OVER PART LOT 108 PLAN 377 PART 2 PLAN 40R30571 IN FAVOUR OF THE CORPORATION OF THE TOWN OF AJAX AS IN DR309514; SUBJECT TO AN EASEMENT IN FAVOUR OF ENBRIDGE GAS INC. AS IN DR2203728; TOWN OF AJAX

Address: 10 Doric Street, Ajax, Ontario

PIN: 26573-0227 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT BLK A, PL 601 AS IN D378110 SAVE AND EXCEPT PART 1 ON DR808229 ;;
TOWN OF WHITBY

Address: 1 Ferguson Avenue, Whitby, Ontario

PIN: 26468-0065 (LT)

Interest/Estate Fee Simple

ABSOLUTE

Description: PCL P-1 SEC M1114; BLK P PL M1114 ; AJAX

Address: 837 Finley Avenue, Ajax, Ontario

PIN: 58750-0552 (LT)

Interest/Estate Fee Simple

LT ABSOLUTE PLUS

Description: BLOCK 17, PLAN 51M1118; CITY OF BARRIE

Address: 133 Franks' Way, Barrie, Ontario

PIN: 26454-0557 (LT)

Interest/Estate	Fee Simple
	LT ABSOLUTE PUS
Description:	PT LT 6 CON 1, PT 5 40R30173 PICKERING; S/T EASEMENT AS IN PI31742; TOWN OF AJAX
Address:	367 Porte Road, Ajax, Ontario

PIN 02937-0020 (LT)

Interest/Estate	Fee Simple
	LT CONVERSION QUALIFIED
Description:	LT 34 PL 6230 MARKHAM ; MARKHAM
Address:	9 Ridgevale Drive, Markham, Ontario

SCHEDULE “C”

PIN	Land Registry Office No.	Registration No.	Registration Date	Instrument Type
03206 – 4245 (LT) and 03206 - 4246 (LT)	65	YR3610007	October 19, 2023	Charge/Mortgage
26575 – 0039 (LT)	40	DR2272796	October 19, 2023	Charge/Mortgage
26486 – 0010 (LT)	40	DR2255795	August 17, 2023	Charge/Mortgage
26452 – 0789 (LT)	40	DR2255792	August 17, 2023	Charge/Mortgage
26573 – 0227 (LT)	40	DR2255793	August 17, 2023	Charge/Mortgage
26468 – 0065 (LT)	40	DR2255794	August 17, 2023	Charge/Mortgage
58750-0552 (LT)	51	SC2001926	August 17, 2023	Charge/Mortgage
26454 – 0557 (LT)	40	DR2272795	October 19, 2023	Charge/Mortgage
02937-0020 (LT)	65	YR3587324	August 17, 2023	Charge/Mortgage

SCHEDULE "D"

PIN: 26385-0113 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 35, CON 4 (PICKERING), PT 11 40R19603, T/W ROW OVER PT 1 40R19603 AS IN LT948413, S/T EASE OVER PT 11 40R19603 AS IN LT1021538, REGIONAL MUNICIPALITY OF DURHAM.

Address: 2825 York Durham Line, Pickering, Ontario

PIN: 26645-0194 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 23 PL 150 BOWMANVILLE AS IN N57467; S/T & T/W N57467; CLARINGTON

Address: 151 Cedar Crest Beach Road, Clarington, Ontario

PIN: 73349-0422 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PCL 23947 SEC SWS SRO; LT 25 PL M463 BALFOUR; LT 26 PL M463 BALFOUR; LT 27 PL M463 BALFOUR; LT 28 PL M463 BALFOUR; LT 29 PL M463 BALFOUR; LT 30 PL M463 BALFOUR EXCEPT PT 1 53R16388; T/W PT 1 53R16388 AS IN LT876520; GREATER SUDBURY,

Address: 214 David Street, Chelmsford, Ontario

PIN: 02132-0052 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: LTS 20, 21 & 22, PLAN 28SA CITY OF SUDBURY

Address: 38 Pearl Street, Sudbury, Ontario

PIN: 26453-0001 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 134 PL 377 AS IN D442047 ; TOWN OF AJAX

Address: 45 Harwood Avenue South, Ajax Ontario

PIN: 14144-0332 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PT LT 8, CON 2 EAST OF HURONTARIO ST CHINGUACOUSY , PARTS 1 & 2, 43R40230; CITY OF BRAMPTON, with PIN 14144-0798, and also legally described as PCL E-32, SEC M161 ; FIRSTLY ; BLK F, PL M161 , EXCEPT PTS 2 TO 9, 43R9987; CITY OF BRAMPTON

Address: 66 Bramhall Circle, Brampton, Ontario

PIN: 21012-0014 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PCL 9-4-18 SEC M10; PT LT 9 E/S WAYLAND AV BLK 18 PL M10 TORONTO; PT LT 11 E/S WAYLAND AV BLK 18 PL M10 TORONTO PT 5, 66R15806; TORONTO , CITY OF TORONTO

Address: 49 Wayland Avenue, Toronto, Ontario

PIN: 28055-0505 (LT)

Interest/Estate Fee Simple

ABSOLUTE

Description: BLOCK 70, PLAN 45M220, PETERBOROUGH.

Address: 245 Spillsbury Drive, Peterborough, Ontario

PIN: 26537-0261 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PART LOTS 355 AND 356 PLAN H50030 WHITBY PART 2, 40R31747; TOWN OF WHITBY

Address: 160 Hillcrest Drive, Whitby, Ontario

PIN: 26537-0262 (LT)

Interest/Estate Fee Simple

LT CONVERSION QUALIFIED

Description: PART LOT 355 PLAN H50030 WHITBY PART 1, 40R31747; TOWN OF WHITBY

Address: 160 Hillcrest Drive, Whitby, Ontario

SANJIVE JOSHI ET AL.
Plaintiffs

-and-

OSMI HOMES INC ET AL.
Defendants
Court file No. CV-23-00710241-0000

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SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9
Harvey Chaiton
LSO No. 21592F
Tel: (416) 218-1129
Email: Harvey@chaitons.com
Stephen Schwartz
LSO No. 25980A
Tel: (416) 218-1132
Email: Stephen@chaitons.com
Darren Marr
LSO No. 79660G
Tel: (416) 218-1136
Email: Dmarr@chaitons.com

Lawyers for the Defendants (Plaintiff by Counterclaim)

FOREMOST MORTGAGE HOLDING CORPORATION

-and-

**BARAKAA DEVELOPER INC.,
LERRATO INC. and 2145499 ONTARIO INC.**

Applicant

Respondents

Court File No. CV-24-00724076-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF HITESH RAJENDRA JHAVERI

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

LSO No. 21592F

Tel: (416) 218-1129

Email: Harvey@chaitons.com

Danish Afroz

Tel: 416.218.1137

Email: Dafroz@chaitons.com

Darren Marr

LSO No. 79660G

Tel: (416) 218-1136

Email: Dmarr@chaitons.com

**Lawyers for the Respondents, 2145499 Ontario Inc.,
Barakaa Developer Inc. and Lerrato Inc.**

FOREMOST MORTGAGE HOLDING CORPORATION

-and-

**BARAKAA DEVELOPER INC.,
LERRATO INC. and 2145499 ONTARIO INC.**

Applicant

Respondents

Court File No. CV-24-00724076-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD OF THE RESPONDENTS

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

LSO No. 21592F

Tel: (416) 218-1129

Email: Harvey@chaitons.com

Danish Afroz

Tel: 416.218.1137

Email: Dafroz@chaitons.com

Darren Marr

LSO No. 79660G

Tel: (416) 218-1136

Email: Dmarr@chaitons.com

**Lawyers for the Respondents, 2145499 Ontario Inc.,
Barakaa Developer Inc. and Lerrato Inc.**